

July 1, 1999

Honorable Jane Garvey  
Administrator  
Federal Aviation Administration  
U.S. Department of Transportation Dockets  
400 Seventh Street, S.W.  
Room Plaza 401  
Washington, DC 20590

**Subject: FAA's inadequate RFA certification of its proposed Parachute Operations rulemaking; Docket No. FAA-99-5483; 64 Fed. Reg. 18,302 (April 13, 1999).**

Dear Administrator Garvey:

On April 13, 1999, the Federal Aviation Administration (FAA) published a Notice of Proposed Rulemaking (NPRM) on Parachute Operations. The FAA proposal would amend the regulations applicable to parachute operations in a number of ways including: define new terms, require that all operations be coordinated with an appropriate air traffic control facility, permit tandem operations, and add a new accident reporting requirement. The FAA proposed this action to enhance the safety of parachute operations in the National Airspace System.

The Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration (SBA) was created in 1976 to represent the views and interests of small businesses in federal policy making activities.<sup>(1)</sup> The Chief Counsel participates in rulemakings when he deems it necessary to ensure proper representation of small business interests. In addition to these responsibilities the Chief Counsel monitors compliance with the Regulatory Flexibility Act (RFA), and works with federal agencies to ensure that their rulemakings analyze and substantiate the impact that their decisions will have on small businesses.

### **Regulatory Flexibility Act Requirements**

The RFA requires administrative agencies to consider the effect of their actions on small entities, including small business, small non-profit enterprises, and small local governments. See 5 U.S.C. § 601, et. seq. If the proposed rule is expected to have a significant economic impact on a substantial number of small businesses, an initial regulatory flexibility analysis (IRFA) must be prepared and published with the proposed rule.

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a

substantial number of small entities. If the head of the agency makes such a certification, the agency shall publish it in the Federal Register, along with a statement providing the factual basis for the certification. *Id.*

### **The FAA's Certification Does Not Comply with the RFA**

In the above referenced proposal, the FAA certified that the Parachute Operations rulemaking would not have a significant impact on a substantial number of small entities. The FAA's only reasoning provided for this certification was that "the proposed rule would require an additional expense of less than \$1,000 per entity (parachute lofts and clubs, sky diving training schools, and certificated riggers) in excess of normal business expenses." 64 Fed. Reg. 18,308.

In its certification, the FAA failed to provide any information about the analysis that it used to make this certification. By not providing the information on the number of entities affected, the impact of the anticipated costs of the rule on a business' profits, and an estimate of the beneficial impacts of the proposal, the FAA failed to provide a factual basis for its certification and did not comply with the Regulatory Flexibility Act. The reason that a factual basis must be provided for comment is to assure that the agency has a basis for its regulation and that it will not adversely effect competition. Without this information, neither the Office of Advocacy, nor the public, can assist in that determination by commenting on the FAA's assumptions and analysis. Therefore, at a minimum, the FAA should provide a factual basis in its Final Rule, with reasons supporting its certification.

The purpose of these requirements is not to overburden agencies. The RFA is intended to provide flexibility to regulations, in order to accomplish the safety objectives of the FAA, while minimizing the impact on small entities.

If your office would like to discuss this matter, or if this office can be of further assistance, please contact Claudia Rayford of my staff. She can be reached at (202) 205-6804.

Sincerely,

Jere W. Glover  
Chief Counsel for Advocacy

Claudia Rayford  
Asst. Chief Counsel for Advocacy

ENDNOTE

1. Regulatory Flexibility Act, 5 U.S.C. § 601, as amended by the Small Business Regulatory Flexibility Act, Pub. L. No. 104-121, 110 Stat. 866 (1996).